

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**AILERON INVESTMENT
MANAGEMENT, LLC, a Florida
limited liability company,**

Plaintiff,

v.

Case No. 8:21-cv-146-MSS-AAS

**AMERICAN LENDING CENTER,
LLC, a California limited liability
company,**

Defendant,

_____ /

ORDER

Defendant American Lending Center, LLC (ALC) moves to compel Plaintiff Aileron Investment Management, LLC (Aileron)'s CEO Bob Beard to appear for a fact witness deposition. (Doc. 79). Aileron responds in opposition. (Doc. 97).

A party may obtain discovery about any nonprivileged matter relevant to any party's claim or defense and proportional to the needs. Fed. R. Civ. P. 26(b)(1). Discovery helps parties ascertain facts that bear on issues. *ACLU of Fla., Inc. v. City of Sarasota*, 859 F.3d 1337, 1340 (11th Cir. 2017) (citations omitted).

A party may move for an order compelling discovery from the opposing

party. Fed. R. Civ. P. 37(a). The party moving to compel discovery has the initial burden of proving the requested discovery is relevant and proportional. *Douglas v. Kohl's Dept. Stores, Inc.*, No. 6:15-CV-1185-Orl-22TBS, 2016 WL 1637277, at *2 (M.D. Fla. Apr. 25, 2016) (quotation and citation omitted). The responding party must then specifically show how the requested discovery is unreasonable or unduly burdensome. *Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550, 1559–60 (11th Cir. 1985).

The court understands the parties previously agreed Mr. Beard would be deposed for a single period of seven hours in both his individual capacity as a fact witness and his capacity as Aileron's corporate representative. (Doc. 79, p. 3 n. 3; Doc. 97, p. 3). The parties appear to state this prior arrangement fell through when ALC determined it required more than the agreed-upon seven hours to depose Mr. Beard. (*Id.*). The court therefore understands the central dispute in this motion is not whether Mr. Beard can be deposed as a fact witness, but for how long and whether the fact witness deposition should be combined with his deposition as Aileron's corporate representative. ALC argues Mr. Beard should participate in two depositions as mandated under Federal Rule of Civil Procedure 30(d): one as a fact witness, and one as Aileron's corporate representative. (Doc. 79, p. 8). Aileron responds claiming

Mr. Beard should instead participate in a single deposition in both capacities for a period of seven hours with the right to make a good faith request for additional time.

“[A] deposition pursuant to Rule 30(b)(6) is substantially different from a witness’s deposition as an individual.” *AllianceOne, Inc. v. Monti*, No. 2:03-cv-629-JES-SPC, 2005 WL 8153191, at *1 (M.D. Fla. March 25, 2005). To that effect, witnesses are often deposed as both fact witnesses and corporate representatives when “the depositions serve distinct purposes, impose different obligations . . . and involve different ramifications.” *Commodity Futures Trading Comm’n v. Midland Rare Coin Exchange, Inc.*, No. 0:97-cv-7422-WPD, 1999 WL 35148749, at *3 (S.D. Fla. August 4, 1999).

Those distinct purposes exist in this case. Aileron listed Mr. Beard in their initial disclosures pursuant to Rule 26(a)(1) as a witness with “knowledge of facts related to the claims asserted by [Aileron] and defenses asserted by ALC.” (Doc. 79, Ex. B). Aileron concedes in their response to ALC’s motion that “[Mr.] Beard has firsthand knowledge of certain facts at issue.” (Doc. 97, p. 6). Aileron provides no evidence to suggest they are such a closely held corporation that Mr. Beard’s personal knowledge “also constitutes the total knowledge of the entity” such that he could “adopt the testimony... obviating the need for a

second deposition.” *Sabre v. First Dominion Capital, L.L.C.*, 2001 WL 1590544, at *2 (S.D.N.Y. Dec. 12, 2001).

Based on this record, requiring Mr. Beard to sit for a fact witness deposition is neither unreasonable nor unduly burdensome. Thus, ALC is entitled to depose Mr. Beard as a fact witness under Rule 26(b)(1). ALC’s Motion to Compel (Doc. 79) is therefore **GRANTED**. Pursuant to Rule 30(d)(1), Mr. Beard may be deposed separately as a fact witness for a period not to exceed seven hours.

ORDERED in Tampa, Florida on December 16, 2021.

A handwritten signature in black ink, reading "Amanda Arnold Sansone". The signature is written in a cursive, flowing style.

AMANDA ARNOLD SANSONE
United States Magistrate Judge